

WA 2314
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ENFORCEMENT CONFIDENTIAL

OCCIDENTAL CHEMICAL CORP/PORT OF TACOMA EASEMENT/ACCESS AGREEMENT

Issue

Issued
dated 1988

In compliance with Occidental Chemical Corporation's (OCC) joint EPA and Ecology Dangerous Waste permit, OCC must complete an RFI, and implement corrective action for its contaminated groundwater plume which extends off-site under Port of Tacoma (PORT) property. Since June, 1990 OCC and the PORT have been engaged in numerous meetings and telephone conversations to legally formalize an easement/access agreement to allow OCC access to the affected PORT properties to conduct the required activities. This agreement would provide the PORT compensation for the loss of use of their properties.

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Background

During OCC's performance of RFI activities pursuant to its Dangerous Waste permit, during 1989 and 1990, and prior to permit issuance, during 1986 through 1988, OCC has on numerous occasions obtained permission from the PORT to install wells and perform sampling of wells on PORT property. This approval process timing has ranged from one (1) to several months depending on PORT priorities and resources for reviewing the acceptability of the proposed locations. The PORT during this time had raised concerns about the duration of the need for these wells. In early 1988, in response to the PORT's duration, and at OCC's request, EPA wrote a letter to OCC addressing the issue of duration. We explained in the letter that the issue of whether all these wells or additional wells would be needed in the long term could not be determined. Based on the review of an April, 1990 groundwater sampling report, which included sampling results from newly installed (Winter, 1990) off-site wells expected to represent the clean edge of the plume, it was agreed by EPA, Ecology, and OCC that the off-site plume was horizontally and vertically more extensive than the data had previously indicated. In a June 1990 conference call the number and location of necessary additional wells was agreed to by EPA, OCC, and Ecology. OCC requested approval from the PORT to install these new wells in June 1990. PORT indicated that they would not approve the installation of any additional wells until an easement and access agreement properly compensating the PORT had been entered into. The PORT and OCC have pursued negotiations including numerous meetings and telephone conversations to resolve this issue. In August, 1990 agreement was reached on the instructions for the property appraiser and drafting on easement agreement commenced by OCC. In September 1990 Appraiser commenced economic impact analysis. In October 1990 OCC sent the PORT a draft of an easement/access agreement (the Appraiser can not complete work until this agreement is finalized.)

86-90
RFI-wells installed
about 1988-1989
Shoreline
cluster

USEPA RCRA



3017994

Current Status*access/easement*

The PORT has yet to provide OCC written comments on draft document. Despite meetings of PORT and OCC representatives in November and December 1990, and numerous telephone calls progress on the access/easement agreement appears to be at a stand still. The PORT concerns raised at the November and December 1990 meetings included:

- (1) **OCC may through its pumping activities find contamination that is the results of PORT activities. The PORT wants OCC to take responsibility for all contamination it finds.**
- (2) PORT wants to study and resolve the issue of wells (monitoring and extraction) on all its properties (including - *Global* unrelated to OCC) at once for its long-term planning purposes.
- (3) PORT wants to include much larger portions of property in the agreement than OCC is requesting, but does not want to allow OCC to use the remaining unneeded portion of property for any other purposes.
- (4) PORT is concerned with their responsibility if OCC violates its discharge permit.

Due to the extensive delays in obtaining the easement/access agreement EPA, Ecology, and OCC have agreed to finalize the design of the groundwater pump & treat program (only on-site), and modify (e.g., add extraction wells, increase pumping rates, expand treatment plant, etc.) the program as additional information becomes available.

EPA Position

EPA believes it has allowed sufficient time for this access/easement agreement issue to be resolved and that OCC has been meeting its responsibilities under the permit for trying to obtain this agreement in good faith. **EPA must take an active role in expediting obtaining this necessary access in the short-term for the additional monitoring wells (determined to be needed almost eight (8) months ago) and in the long-term (as early as within the next 6 months) for extraction wells.**

Options

- (1) Enforcement action against the PORT:
 - a. Pursuant to Superfund Authority (106 and/or 104 Order)
 - b. Pursuant to RCRA (3013 Order).
- (2)* EPA Attorney contact PORT Attorney and explain the position they have placed us in respect to the legal actions we may be forced to take.
- (3)* EPA/PORT meeting.

*To be followed by option 1, if no significant progress within 30 days.

Write Port a letter.